

March 6, 2015

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

Bill T. Dutra, Owner/CEO
Harry Stewart, COO
James Hagood, CFO
The Dutra Group
San Rafael Rock Quarry, Inc.
2350 Kerner Blvd., Ste. 220
San Rafael, CA 94901

Agent for Service of Process for
The Dutra Group &
San Rafael Rock Quarry, Inc.
National Registered Agents, Inc.
818 W. Seventh St.
Los Angeles, CA 90017

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

Dear Sirs:

I am writing on behalf of San Francisco Baykeeper ("Baykeeper") to give notice that Baykeeper intends to file a civil action against The Dutra Group and San Rafael Rock Quarry, Inc. (collectively, "Dutra") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at Dutra's facility located at 1000 Point San Pedro Road, San Rafael, California (the "Facility").

Baykeeper is a non-profit public benefit corporation organized under the laws of California, with its office in Oakland, California. Baykeeper's purpose is to protect and enhance the water quality and natural resources of San Francisco Bay, its tributaries, and other waters in the Bay Area, for the benefit of its ecosystems and communities. Baykeeper has over three thousand members who use and enjoy San Francisco Bay and other waters for various recreational, educational, and spiritual purposes. Baykeeper's members' use and enjoyment of these waters are negatively affected by the pollution caused by Dutra's operations.

This letter addresses Dutra's unlawful discharge of pollutants from the Facility via stormwater into San Francisco Bay. Specifically, Baykeeper's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Industrial Stormwater Permit").¹

¹ On April 1, 2014, the State Water Resources Control Board adopted an updated NPDES General Permit for Discharges Associated with Industrial Activity, Water Quality Order No. 2014-57-DWQ, which has no force or effect until its effective date of July 1, 2015. As of the effective date, Water Quality Order No. 2014-57-DWQ will supersede and rescind the current Industrial Stormwater Permit except for purposes of enforcement actions brought pursuant to the current permit.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to Dutra of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, Baykeeper intends to file suit in federal court against Dutra under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, Baykeeper is willing to discuss effective remedies for the violations noticed in this letter. We suggest that Dutra contact us within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, and service of the complaint shortly thereafter, even if discussions are continuing when the notice period ends.

I. THE LOCATION OF THE ALLEGED VIOLATIONS.

A. The Facility.

Dutra's Facility is located at 1000 Point San Pedro Road, San Rafael, California. At the Facility, Dutra operates an active rock quarry, which produces rip rap, base rock, asphalt, fill material, and sand. The Facility also maintains a fuel dock, lube shop, maintenance shop, fabrication shop, processing plant, asphalt plant, vehicle storage, spray rack, dock, and inert construction debris stockpiles. Potential pollutants that may come in contact with stormwater include the following: sediment, iron, nitrite and nitrate, grease and oil, construction aggregate, asphaltic oil, antifreeze, cleaning fluids, and Portland cement. The Facility has four (4) designated stormwater discharge points, and its stormwater discharges into San Francisco Bay.

B. The Affected Water.

San Francisco Bay is a water of the United States. The CWA requires that water bodies such as San Francisco Bay meet water quality objectives that protect specific "beneficial uses." The beneficial uses of San Francisco Bay and its tributaries include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the beneficial uses and ecosystem of this watershed, which includes significant habitat for listed rare and endangered species.

II. THE ACTIVITIES AT THE FACILITY CONSTITUTE VIOLATIONS OF THE CLEAN WATER ACT.

It is unlawful to discharge pollutants to waters of the United States, such as San Francisco Bay, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

In 1997, Dutra submitted a Notice of Intent (“NOI”) to be authorized to discharge stormwater from the Facility under the Industrial Stormwater Permit. However, information available to Baykeeper indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit, thereby violating the CWA. Apart from discharges that comply with the Industrial Stormwater Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

A. Discharges in Excess of BAT/BCT Levels.

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable (“BAT”) for toxic pollutants² and best conventional pollutant control technology (“BCT”) for conventional pollutants.³ Industrial Stormwater Permit, Order Part B(3). EPA has published Benchmark values set at the maximum pollutant concentration present if an industrial facility is employing BAT and BCT, as listed in Attachment 1 to this letter.⁴

Dutra’s self-reported exceedances of Benchmark values over the last five (5) years, identified in Attachment 2 to this letter, indicate that Dutra has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial Stormwater Permit. Baykeeper alleges and notifies Dutra that its stormwater discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values for iron, nitrite and nitrate, and total suspended solids (“TSS”), and have contained at least one exceedance for oil and grease.

² BAT is defined at 40 C.F.R. § 442.23. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

³ BCT is defined at 40 C.F.R. § 442.22. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

⁴ The Benchmark values are part of EPA’s Multi-Sector General Permit (“MSGP”) and can be found at: http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf. *See* 73 Fed. Reg. 56,572 (Sept. 29, 2008) (Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities). In the latest version of the permit, EPA has proposed the inclusion of Benchmark values for facilities that discharge into saltwater, which can be found at: http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2013_proposedpermit8.pdf. *See* 78 Fed. Reg. 59,672 (Sept. 27, 2013) (Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities).

Dutra's ongoing discharges of stormwater containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that Dutra has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce the build-up of pollutants on-site, installing filters in downspouts and storm drains, and other similar measures.

Dutra's failure to develop and/or implement adequate pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day Dutra discharges stormwater without meeting BAT/BCT. Baykeeper alleges that Dutra has discharged stormwater containing excessive levels of pollutants from the Facility to San Francisco Bay during at least every significant local rain event over 0.1 inches in the last five (5) years.⁵ Attachment 3 compiles all dates in the last five (5) years when a significant rain event occurred. Dutra is subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA within the past five (5) years.

B. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

The Industrial Stormwater Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). Industrial Stormwater Permit, Section A(1)(a). The Industrial Stormwater Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly. *Id.* at Order Part E(2).

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all potential pollutant sources, a description of the BMPs that will reduce or prevent pollutants in stormwater discharges, specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels, a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP within 90 days after a facility manager determines that the SWPPP is in violation of any requirements of the Industrial Stormwater Permit. *See* Industrial Stormwater Permit, Section A.

Based on information available to Baykeeper, Dutra has failed to prepare and/or implement an adequate SWPPP and/or to revise the SWPPP to satisfy each of the requirements of Section A of the Industrial Stormwater Permit. For example, Dutra's SWPPP does not include, and Dutra has not implemented, adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with Section A(8) of the Industrial Stormwater Permit, as evidenced by the data in Attachment 2.

⁵ Significant local rain events are reflected in the rain gauge data available at:
<http://www.ncdc.noaa.gov/cdo-web/search>.

Accordingly, Dutra has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of Section A of the Industrial Stormwater Permit, and Dutra will continue to be in violation every day until it develops and/or implements an adequate SWPPP. Dutra is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring within the past five (5) years.

C. Failure to Develop and Implement an Adequate Monitoring and Reporting Program and to Perform Annual Comprehensive Site Compliance Evaluations.

The Industrial Stormwater Permit requires facility operators to develop and implement a Monitoring and Reporting Program ("MRP"). Industrial Stormwater Permit, Section B(1) and Order Part E(3). The Industrial Stormwater Permit requires that the MRP ensure that each facility's stormwater discharges comply with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial Stormwater Permit. *Id.* at Section B(2). Facility operators must ensure that their MRP practices reduce or prevent pollutants in stormwater and authorized non-stormwater discharges as well as evaluate and revise their practices to meet changing conditions at the facility. *Id.* This may include revising the SWPPP as required by Section A of the Industrial Stormwater Permit.

The MRP must measure the effectiveness of BMPs used to prevent or reduce pollutants in stormwater and authorized non-stormwater discharges, and facility operators must revise the MRP whenever appropriate. *Id.* at Section B(2). The Industrial Stormwater Permit requires facility operators to visually observe and collect samples of stormwater discharges from all drainage areas. *Id.* at Section B(7). Facility operators are also required to provide an explanation of monitoring methods describing how the facility's monitoring program will satisfy these objectives. *Id.* at Section B(10).

Dutra has been operating the Facility with an inadequately-developed and/or inadequately-implemented MRP, in violation of the substantive and procedural requirements set forth in Section B of the Industrial Stormwater Permit. For example, the data in Attachment 2 indicates that Dutra's monitoring program has not ensured that stormwater discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial Stormwater Permit as required by Section B(2). The monitoring program has not resulted in practices at the Facility that adequately reduce or prevent pollutants in stormwater as required by Section B(2). Similarly, the data in Attachment 2 indicate that Dutra's MRP has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of BMPs in use or the Facility's SWPPP to address such ongoing problems as required by Section B(2).

As a result of Dutra's failure to adequately develop and/or implement an adequate MRP at the Facility, Dutra has been in daily and continuous violation of the Industrial

Stormwater Permit and the CWA each and every day for the past five (5) years. These violations are ongoing. Dutra will continue to be in violation of the monitoring and reporting requirements each day that Dutra fails to adequately develop and/or implement an effective MRP at the Facility. Dutra is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for the last five (5) years.

D. Discharges Without Permit Coverage.

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES permit issued pursuant to section 402 of the CWA. *See* 33 U.S.C. §§ 1311(a), 1342. Dutra sought coverage for the Facility under the Industrial Stormwater Permit, which states that any discharge from an industrial facility not in compliance with the Industrial Stormwater Permit "must be either eliminated or permitted by a separate NPDES permit." Industrial Stormwater Permit, Order Part A(1). Because Dutra has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial Stormwater Permit, each and every discharge from the Facility described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

IV. PERSONS RESPONSIBLE FOR THE VIOLATIONS.

The Dutra Group, San Rafael Rock Quarry, Inc. are the persons responsible for the violations at the Facility described above.

V. NAME AND ADDRESS OF NOTICING PARTY.

Our name, address, and telephone number is as follows:

San Francisco Baykeeper
1736 Franklin Street, Suite 800
Oakland, CA 94612
(510) 735-9700

VI. COUNSEL.

Baykeeper is represented by the following counsel in this matter, to whom all communications should be directed:

Nicole C. Sasaki, Associate Attorney
George Torgun, Managing Attorney
San Francisco Baykeeper
1736 Franklin Street, Suite 800
Oakland, CA 94612
(510) 735-9700

Nicole C. Sasaki: (510) 735-9700 x110, nicole@baykeeper.org
George Torgun: (510) 735-9700 x105, george@baykeeper.org

VII. REMEDIES.

Baykeeper intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against Dutra for the above-referenced violations. Baykeeper will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, Baykeeper will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against Dutra in this action. The CWA imposes civil penalty liability of up to \$37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. Baykeeper will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, Baykeeper is willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact Nicole or George to initiate these discussions.

Sincerely,



Nicole C. Sasaki
Associate Attorney
San Francisco Baykeeper

Cc:

Gina McCarthy Administrator US EPA, William Jefferson Clinton Bldg. 1200 Pennsylvania Avenue, N.W. Mail Code: 1101A Washington, DC 20460	Bruce Wolfe Executive Officer Regional Water Quality Control Board San Francisco Bay Region 1515 Clay Street, Suite 1400 Oakland, CA 94612
Jared Blumenfeld Regional Administrator U.S. EPA - Region 9 75 Hawthorne Street San Francisco, CA 94105	Thomas Howard Executive Director State Water Resources Control Board 1001 I Street Sacramento, CA 95814

**Attachment 1: EPA Benchmarks,
2000 and 2008 Multi-Sector General Permits (“MSGP”)**

Parameter	Units	Benchmark value	Source
Total Suspended Solids (TSS)	mg/L	100	2008 MSGP
Oil & Grease	mg/L	15	2000 MSGP
Iron Total	mg/L	1.0	2008 MSGP
Nitrate + Nitrite Nitrogen	mg/L	0.68	2008 MSGP

Attachment 2: Table of Exceedances for The Dutra Group/San Rafael Rock Quarry, Inc.

Table containing each stormwater sampling result which exceeds EPA Benchmarks. The EPA Benchmarks are listed in Attachment 1. All stormwater samples were reported by the Facility during the past five (5) years.

No.	Sampling Date	Parameter		Value	Units	Wet Season	Exceeds Bench- mark
1	12/7/2010	Iron Total	=	4.5	mg/L	2010-2011	✓
2	12/17/2010	Iron Total	=	6.5	mg/L	2010-2011	✓
3	12/17/2010	Iron Total	=	7.2	mg/L	2010-2011	✓
4	12/17/2010	Iron Total	=	21	mg/L	2010-2011	✓
5	1/23/2012	Iron Total	=	1.5	mg/L	2011-2012	✓
6	1/23/2012	Iron Total	=	1.2	mg/L	2011-2012	✓
7	3/1/2012	Iron Total	=	1.3	mg/L	2011-2012	✓
8	3/1/2012	Iron Total	=	2.4	mg/L	2011-2012	✓
9	3/1/2012	Iron Total	=	2.8	mg/L	2011-2012	✓
10	3/1/2012	Iron Total	=	3.1	mg/L	2011-2012	✓
11	11/28/2012	Iron Total	=	9.7	mg/L	2012-2013	✓
12	11/28/2012	Iron Total	=	3.7	mg/L	2012-2013	✓
13	11/20/2013	Iron Total	=	5.5	mg/L	2013-2014	✓
14	11/20/2013	Iron Total	=	36	mg/L	2013-2014	✓
15	11/20/2013	Iron Total	=	3.6	mg/L	2013-2014	✓
16	11/20/2013	Iron Total	=	1.8	mg/L	2013-2014	✓
17	4/4/2014	Iron Total	=	97	mg/L	2013-2014	✓
18	4/4/2014	Iron Total	=	1.2	mg/L	2013-2014	✓
19	4/4/2014	Iron Total	=	1.7	mg/L	2013-2014	✓
20	12/7/2010	Nitrate Total	=	1.8	mg/L	2010-2011	✓
21	12/7/2010	Nitrate Total	=	10	mg/L	2010-2011	✓
22	12/17/2010	Nitrate Total	=	1.4	mg/L	2010-2011	✓
23	12/17/2010	Nitrate Total	=	3.5	mg/L	2010-2011	✓
24	1/23/2012	Nitrate Total	=	12	mg/L	2011-2012	✓
25	1/23/2012	Nitrate Total	=	1.9	mg/L	2011-2012	✓
26	1/23/2012	Nitrate Total	=	26	mg/L	2011-2012	✓
27	1/23/2012	Nitrate Total	=	27	mg/L	2011-2012	✓
28	3/1/2012	Nitrate Total	=	2.6	mg/L	2011-2012	✓
29	3/1/2012	Nitrate Total	=	13	mg/L	2011-2012	✓
30	3/1/2012	Nitrate Total	=	2.8	mg/L	2011-2012	✓
31	3/1/2012	Nitrate Total	=	5.9	mg/L	2011-2012	✓
32	11/28/2012	Nitrate Total	=	9.4	mg/L	2012-2013	✓
33	11/28/2012	Nitrate Total	=	8	mg/L	2012-2013	✓
34	11/28/2012	Nitrate Total	=	20	mg/L	2012-2013	✓
35	11/20/2013	Nitrate Total	=	8.6	mg/L	2013-2014	✓

36	11/20/2013	Nitrate Total	=	2.7	mg/L	2013-2014	✓
37	11/20/2013	Nitrate Total	=	6.8	mg/L	2013-2014	✓
38	11/20/2013	Nitrate Total	=	8.6	mg/L	2013-2014	✓
39	4/4/2014	Nitrate Total	=	10	mg/L	2013-2014	✓
40	4/4/2014	Nitrate Total	=	9.7	mg/L	2013-2014	✓
41	4/4/2014	Nitrate Total	=	55	mg/L	2013-2014	✓
42	12/17/2010	Oil and Grease	=	19	mg/L	2010-2011	✓
43	12/7/2010	Total Suspended Solids (TSS)	=	130	mg/L	2010-2011	✓
44	12/17/2010	Total Suspended Solids (TSS)	=	210	mg/L	2010-2011	✓
45	12/17/2010	Total Suspended Solids (TSS)	=	170	mg/L	2010-2011	✓
46	12/17/2010	Total Suspended Solids (TSS)	=	1000	mg/L	2010-2011	✓
47	11/28/2012	Total Suspended Solids (TSS)	=	180	mg/L	2012-2013	✓
48	11/28/2012	Total Suspended Solids (TSS)	=	130	mg/L	2012-2013	✓
49	11/20/2013	Total Suspended Solids (TSS)	=	120	mg/L	2013-2014	✓
50	11/20/2013	Total Suspended Solids (TSS)	=	1200	mg/L	2013-2014	✓
51	4/4/2014	Total Suspended Solids (TSS)	=	2800	mg/L	2013-2014	✓

Attachment 3: Alleged Dates of Exceedances by Dutra Group/San Rafael Rock Quarry, February 2010 to February 2015

Days with precipitation one-tenth of an inch or greater, as reported by NOAA's National Climatic Data Center; San Rafael Civic Center, CA station, when a stormwater discharge from the Facility is likely to have occurred. <http://www.ncdc.noaa.gov/cdo-web/search>

2010	2011	2012	2013	2014	2015
3/9	1/1	1/20*	1/5	2/2	2/9
3/12	1/2	1/21*	1/24*	2/6	
3/24	1/13	1/23*	2/7*	2/7	
3/29	1/29	2/7	2/19	2/8	
3/30	1/30	2/29	3/5	2/9	
3/31	2/14	3/1	3/6	2/26	
4/2	2/15	3/13	3/31	2/28	
4/4	2/16	3/14	4/1	3/3	
4/11	2/17	3/16	4/4	3/5	
4/12	2/18	3/24	6/24	3/26	
4/20	2/19	3/25	6/25	3/27	
4/27	2/24	3/27	9/21	3/29	
4/28	2/25	3/31	11/19	3/31	
5/10	3/2	4/11*	11/20	4/1	
5/17	3/6	4/12*	12/6	4/2	
5/25	3/13	4/13*	12/7	4/4	
5/27	3/14	4/25		4/25	
10/17	3/15	10/22		9/25	
10/22	3/17	10/24		10/15	
10/23	3/18	10/31		10/25	
10/24	3/19	11/8		10/31	
10/29	3/20	11/9		11/20	
11/7	3/22	11/16		11/21	
11/19	3/23	11/17		11/23	
11/20	3/24	11/20		12/1	
11/21	3/25	11/28		12/7	
11/23	3/26	11/29		12/12	
11/27	5/16	11/30		12/13	
12/2	6/4	12/1		12/18	
12/5	6/28	12/2			
12/6	10/4*	12/5			
12/8	10/5*	12/15			
12/17	10/6*	12/16			
12/18	11/6	12/17			
12/19	11/11	12/21			
12/20	11/19	12/22			
12/21	11/20	12/23			
12/22	11/24	12/25			
12/25		12/26			
12/28		12/29			

* Data reported from Richmond, CA station.